

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SAMUEL MENDEZ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-35E
)	
PENNSYLVANIA DEPARTMENT OF)	Judge Sean J. McLaughlin
CORRECTIONS; PRISON HEALTH)	Magistrate Judge Susan Paradise Baxter
SERVICES, INC.; DR. MARK)	
BAKER; DR. FRAIDER)	
)	
)	
)	
Defendants.)	Electronically Filed.

**DEFENDANT DEPARTMENT OF CORRECTION'S RESPONSE TO
PLAINTIFF'S MOTION TO AMEND**

1. Plaintiff filed his original complaint on February 15, 2005 (*See* Doc. # 3). Defendant DOC filed a Motion to Dismiss and Brief in Support on October 7, 2005 (See Doc's # 16, 17). In that Motion and Brief the DOC argued that the 11th Amendment barred suit in this case and that Plaintiff's medical complaints failed to state a constitutional claim. On October 25, 2005, Plaintiff filed a Motion to Amend his original complaint (See Doc # 29). By text Order dated November 3, 2005, this Court ordered all defendants to file a response to Plaintiff's Motion to Amend.

2. The undersigned attorney was recently assigned to this case. He discovered that no response to Plaintiff's Motion to Amend was filed on behalf of the DOC. On April 19, 2006, the DOC filed a Motion for Leave to File Response to Amended Complaint *Nunc Pro Tunc* (*See* Doc. # 46). By Order dated that same day, this

Court gave the DOC until April 26, 2006 to respond to Plaintiff's Motion to Amend (See Doc. # 47).

3. Plaintiff's Motion to Amend fails to remedy the deficiencies Defendant DOC noted in its Motion to Dismiss and Brief in Support. If anything, it appears that Plaintiff has removed the DOC from this suit. Apart from simply retaining the DOC in the caption to his Motion to Amend, Plaintiff fails to even mention the DOC in the body of the Motion or in the proposed amendments to his complaint.

4. Even viewing the allegations in both the original Complaint and Motion to Amend in the light most favorable to Plaintiff, it appears that he is pursuing relief on grounds of negligence which does not rise to the level of a constitutional violation.

WHEREFORE, the Defendant DOC requests that this Court deny Plaintiff's Motion to Amend Complaint.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

s/Robert A. Willig
Robert A. Willig
Senior Deputy Attorney General
Attorney I.D. No. 53581

Office of Attorney General
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Date: April 21, 2006

Susan J. Forney
Chief Deputy Attorney General